

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Miriam Lynch	Team: Squad #9	CCRB Case #: 201705291	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 06/02/2017 7:30 PM	Location of Incident: § 87(2)(b) Hospital; BX17 bus stop in front of 1 Fordham Plaza	Precinct: 48	18 Mo. SOL 12/2/2018	EO SOL 12/2/2018	
Date/Time CV Reported Wed, 06/28/2017 1:08 AM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Wed, 06/28/2017 1:08 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Soto	07250	952259	048 PCT
2. POM Anthony Shepherd	03527	953397	048 PCT
3. POM Andres Zambrano	13633	952365	048 PCT
4. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Chad Kirk	07380	960762	048 PCT
2. SGT Ryan Boylan	00197	946801	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Off. Language: In front of 1 Fordham Plaza in the Bronx, an officer made remarks to § 87(2)(b) based upon his physical disability.	
B. An officer	Discourtesy: In front of 1 Fordham Plaza in the Bronx, an officer spoke discourteously to § 87(2)(b)	
C. An officer	Abuse: In front of 1 Fordham Plaza in the Bronx, an officer disseminated information regarding § 87(2)(b)'s medical status.	
D. POM Michael Soto	Discourtesy: In front of 1 Fordham Plaza in the Bronx, Police Officer Michael Soto spoke discourteously to § 87(2)(b)	
E. POM Andres Zambrano	Force: At the 48th Precinct stationhouse in the Bronx, Police Officer Andres Zambrano used physical force against § 87(2)(b)	
F. An officer	Force: At the 48th Precinct stationhouse in the Bronx, an officer used physical force against § 87(2)(b)	
G. POM Anthony Shepherd	Force: At § 87(2)(b) Hospital in the Bronx, Police Officer Anthony Shepherd used a chokehold against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
H.POM Anthony Shepherd	Force: At § 87(2)(b) Hospital in the Bronx, Police Officer Anthony Shepherd restricted § 87(2)(b)'s breathing.	
I.POM Anthony Shepherd	Discourtesy: At § 87(2)(b) Hospital in the Bronx, Police Officer Anthony Shepherd spoke discourteously to § 87(2)(b).	

Case Summary

On June 2, 2017, at approximately 7:30 p.m. § 87(2)(b) entered the TJ Maxx store, located at 1 Fordham Plaza in the Bronx, and stole several men's shirts. He was seen doing so by the store's loss prevention officer, § 87(2)(b) who followed him out of the store and alerted police, one of whom was PO Andres Zambrano, a Neighborhood Coordination officer in the 48th Precinct. He and two other officers who could not be identified by the investigation removed § 87(2)(b) from a bus he had boarded after the theft. One of these officers allegedly stated, "Who wants to deal with this § 87(2)(b) shit?" (**Allegations A, B, and C**) in the presence of the other passengers on the bus.

§ 87(2)(b) was placed into a vehicle by two Neighborhood Coordination Officers who were working at an event in the vicinity of the incident location, PO Michael Soto and PO Andres Zambrano, both of the 48th Precinct. PO Soto allegedly told § 87(2)(b) "I'll be the one fucking your wife this weekend" (**Allegation D**).

PO Soto and PO Zambrano brought § 87(2)(b) back to the 48th Precinct stationhouse. PO Zambrano escorted § 87(2)(b) from the vehicle to the 48th Precinct stationhouse. He allegedly punched § 87(2)(b) in the ribs on the way to the stationhouse (**Allegation E**).

Once § 87(2)(b) was in the stationhouse, an officer whom he did not see allegedly slapped him in the face in the presence of § 87(2)(b) another prisoner (**Allegation F**). Within half an hour, § 87(2)(b) was taken to § 87(2)(b) Hospital by § 87(2)(b) and § 87(2)(b) § 87(2)(b).

In the waiting room of § 87(2)(b) Hospital, § 87(2)(b) began to ask which crimes he was being charged with. PO Shepherd told him that he was being charged with robbery, which made § 87(2)(b) upset. He stood up from his chair in the waiting room. PO Shepherd allegedly told him, "Don't fuck with me. I'm not the one," and allegedly pressed two fingers into the front of § 87(2)(b)'s throat, restricting his breathing (**Allegations G, H, and I**).

This case was closed in a period of greater than 90 days for the following reasons:

There were potential witnesses for this case from three different incident locations: in front of TJ Maxx, the holding cells, and § 87(2)(b) Hospital. Due to the vagueness of § 87(2)(b)'s medical records from § 87(2)(b) Hospital and FDNY, it was not determined that § 87(2)(b) and § 87(2)(b) were potential witnesses to the force allegations at the hospital until after PO Shepherd had been interviewed. Scheduling attempts for PO Zambrano began on September 26, 2017, but due to cancellations and training, he could not be interviewed until October 25, 2017.

There was no video footage available for this incident.

§ 87(2)(b)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation due to § 87(2)(b)'s arrest.
- § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- On August 29, 2017, the New York City Office of the Comptroller confirmed that there has been no notice of claim filed on behalf of § 87(2)(b) (Board Review 2).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (Board Review 3).
- PO Soto has been a member of service for five years. Four prior CCRB complaints, with six prior allegations, have been filed against him. None has been substantiated (Board Review 4).
 - § 87(2)(g)
[REDACTED]
- PO Zambrano has been a member of service for five years. Two prior CCRB complaints, with six prior allegations, have been filed against him (Board Review 4).
 - Three of these allegations, threat of force allegations in CCRB case 201608016, were substantiated, and charges are pending.
 - § 87(2)(g)
[REDACTED]
- PO Shepherd has been a member of service for five years. This is the first CCRB complaint filed against him (Board Review 4).
- PO Kirk has been a member of service for one year. This is the first CCRB complaint filed against him (Board Review 4).

Potential Issues

- § 87(2)(b) a TJ Maxx loss prevention specialist, refused to cooperate with the investigation (Board Review 5). § 87(2)(b) a detainee in the 48th Precinct, did not respond to CCRB contact attempts to participate in the investigation (Board Review 6).
- PO Zambrano stated in his interview that there was a foot post at 1 Fordham Plaza. He was not able to identify the foot post in the 48th Precinct roll call. He was not able to identify any of the officers in the 48th Precinct roll call. This post is not reflected on the SPRINT index, or in the ICAD (Board Reviews 7 and 8).

Findings and Recommendations

Allegation A –Offensive Language: In front of 1 Fordham Plaza in the Bronx, an officer made remarks to § 87(2)(b) based upon physical disability.

Allegation B –Discourtesy: In front of 1 Fordham Plaza in the Bronx, an officer spoke discourteously to § 87(2)(b)

Allegation C –Abuse of Authority: In front of 1 Fordham Plaza in the Bronx, an officer improperly disseminated § 87(2)(b)'s medical information.

Whether an officer made remarks based upon § 87(2)(b)'s stated § 87(2)(b) status is in dispute. § 87(2)(b) stated that this incident began when he was shoplifting from the TJ Maxx at 1 Fordham Plaza. He stated that a loss prevention officer, identified by the investigation as § 87(2)(b), attempted to stop him, but that he verbally refused, and left the store with the merchandise. He then boarded a BX-17 bus to get away.

§ 87(2)(b) alleged that when he was initially taken into custody, a white, male, uniformed officer stated, "I don't want to deal with this § 87(2)(b) shit." § 87(2)(b) stated that the subject officer made this statement as he was taking § 87(2)(b) off of the BX-17 bus, and that the statement was made within hearing range of the other passengers (Board Review 9). Patrol Guide Procedure defines § 87(2)(b) status as a form of disability, and Patrol Guide Procedure forbids officers from making statements motivated by bias against disabled individuals (Board Reviews 10 and 11).

PO Zambrano stated that he was likely the officer who handcuffed him on the bus. He remembered other officers bring present, and believed that there was a temporary post at 1 Fordham Plaza. He could not, however, identify any of the officers by viewing the 48th Precinct Roll Call, and he could not identify which of the listed posts might have correlated to 1 Fordham Plaza. PO Soto stated that there may have been other officers present, but he could not identify any of them, as he did not see § 87(2)(b) until he was with only PO Zambrano. Both officers denied that they saw any officers make this statement. Both PO Soto and PO Zambrano stated that he himself brought up his § 87(2)(b) (Board Review 12 and 13).

No posts on the roll call specifically denote officers being at 1 Fordham Plaza. The officers assigned to the sector, Sector A, were taking a meal at the time that the initial crime was committed. The other officers officially assigned to Sector A were the Neighborhood Coordination Officers, PO Zambrano and PO Soto. In addition, since there were already officers at the incident location, and they were flagged down by § 87(2)(b)'s apprehension did not generate a contemporaneous list of officers who responded, other than PO Soto and PO Zambrano, who are the only officers listed (Board Reviews 7, 8, and 14).

§ 87(2)(b)'s description of the subject officer, a uniformed white male, does not render him uniquely distinguishable. The lack of documentation in regards to each officer who arrived on scene presented a challenge, and the identified officers who were present could not provide insight into who this officer was. § 87(2)(g)

§ 87(2)(b)

Allegation D: In front of 1 Fordham Plaza in the Bronx, Police Officer Michael Soto spoke discourteously to § 87(2)(b)

It is undisputed that § 87(2)(b) waited in PO Soto and PO Zambrano's marked vehicle after he was arrested, while PO Shepherd and PO Kirk arrived at the scene from where they were

taking their meal. Whether PO Soto spoke discourteously to § 87(2)(b) during that time is in dispute.

§ 87(2)(b) stated that PO Soto told him, “I’ll be the one fucking your wife this weekend,” after § 87(2)(b) stated that he believed that he would only be in police custody for one weekend, for petit larceny (Board Review 9).

PO Soto denied making this statement. He stated that § 87(2)(b) instead threatened to have sex with a female partner of his. PO Zambrano did not hear any statements to this effect being made, either by § 87(2)(b) or by PO Soto. PO Shepherd and PO Kirk did not hear these statements being made while they were on scene (Board Reviews 12, 13, 15, and 16).

§ 87(2)(g)

Allegation E: At the 48th Precinct stationhouse in the Bronx, Police Officer Andres Zambrano used physical force against § 87(2)(b)

Allegation F: At the 48th Precinct stationhouse in the Bronx, an officer used physical force against § 87(2)(b)

It is undisputed that PO Zambrano brought § 87(2)(b) from the marked vehicle to the 48th Precinct stationhouse. Whether he used force against § 87(2)(b) however, is in dispute.

§ 87(2)(b) stated that as PO Zambrano was bringing him from the police vehicle to the stationhouse, PO Zambrano told him to walk faster, and then punched him in the ribs. He stated that when he was being taken into the holding cells of the stationhouse, he was slapped by an officer (Board Review 9).

Both PO Soto and PO Zambrano confirmed that PO Zambrano walked § 87(2)(b) from the police car to the stationhouse. PO Zambrano stated that this was because § 87(2)(b) seemed to become upset when he was around PO Soto. PO Zambrano stated that when he was escorting § 87(2)(b) from the car to the stationhouse, § 87(2)(b) was calm and cooperative. He denied punching § 87(2)(b) (Board Reviews 12 and 13).

PO Soto, PO Zambrano, PO Shepherd, and PO Kirk all stated that they assisted in escorting § 87(2)(b) into the holding cells. None of them mentioned that he offered any physical resistance to going into the cells, and none of them admitted to punching him, or to using any force against him (Board Reviews 12, 13, 15, and 16). Sgt. Boylan, the desk sergeant at the time of the incident, denied that any officer used force against him (Board Review 17).

§ 87(2)(b) did not respond to CCRB contact attempts requesting that she participate with the investigation.

§ 87(2)(b)s EMS records indicate that he denied chest and head pain when he was first transported from the stationhouse (Privileged Documents 1). He was given a chest X-ray at § 87(2)(b) Hospital after complaining of pain, and there were no results that suggested injury (Privileged Documents 2).

§ 87(2)(g)

§ 87(2)(g)

Allegation G: At § 87(2)(b) Hospital in the Bronx, Police Officer Anthony Shepherd spoke discourteously to § 87(2)(b)

Allegation H: At § 87(2)(b) Hospital in the Bronx, Police Officer Anthony Shepherd used a chokehold against § 87(2)(b)

Allegation I: At § 87(2)(b) Hospital in the Bronx, Police Officer Anthony Shepherd obstructed § 87(2)(b)'s breathing.

It is undisputed that PO Shepherd and PO Kirk were the officers escorting § 87(2)(b) to § 87(2)(b) Hospital, and that § 87(2)(b) and § 87(2)(b) operated the ambulance that took him there. It is undisputed that § 87(2)(b) was escorted out of the emergency room at § 87(2)(b) Hospital to be sedated after he began to yell.

§ 87(2)(b) stated that he was sent to the hospital for reasons that he did not know. EMS took him to § 87(2)(b) Hospital. He stated that he was arguing with PO Shepherd about being taken to the hospital, and was asking why he was in a psychiatric hospital. He alleged that PO Shepherd said, "Don't fuck with me. I'm not the one," grabbed him, and pressed his index and middle fingers into the front of his throat. This action allegedly obstructed § 87(2)(b)'s breathing. § 87(2)(b) was sedated shortly afterwards (Board Review 9).

PO Shepherd agreed that § 87(2)(b) was being verbally agitated after asking about his charges, and being told that he was being charged with robbery, but he denied using profanity to calm him down. He stated that he placed his hand on the front of § 87(2)(b)'s chest, and guided him down, back into the chair he was sitting in in the waiting room. Individuals from the EMS station then made the decision to sedate § 87(2)(b) (Board Review 15).

PO Kirk denied that PO Shepherd used profanity or force against § 87(2)(b). He stated that he also participated in guiding § 87(2)(b) into the chair from which he rose (Board Review 16).

§ 87(2)(b) stated that he was never out of earshot of § 87(2)(b) before § 87(2)(b) was sedated. He confirmed that § 87(2)(b) was being argumentative with PO Shepherd, and standing up out of his chair, and that PO Shepherd and PO Kirk guided him gently back into the chair. § 87(2)(b) stated that as an § 87(2)(b) one of his more important medical responsibilities involves ensuring that his patients are able to breathe. He and § 87(2)(b) stated that had § 87(2)(b) been unable to breathe, then he would have been professionally obligated to intervene, in order to keep § 87(2)(b)'s airway clear. They denied that PO Shepherd placed pressure on § 87(2)(b)'s throat or windpipe. Before § 87(2)(b) was sedated, he remained the EMTs' responsibility, and by their testimony, they bore liability if the officers compromised his physical integrity. Additionally, they did not hear PO Shepherd using profanity (Board Reviews 18 and 19).

Sgt. Boylan stated that he sent § 87(2)(b) to the hospital on his own request (Board Review 17). Sgt. Boylan's statement is corroborated by § 87(2)(b)'s EMS records, which indicate that his chief complaint was, "I wanna go to the hospital." At no point do these or any other medical records denote any form of neck contact, trauma, or injury, much less that perpetrated by officers. His pre-arraignment screening form stated that he was not a medical or psychiatric priority. He was sent to Bellevue Hospital, but they refused to admit him (Privileged Documents 1).

§ 87(2)(b), § 87(2)(g)

Though the EMTs did not hear PO Shepherd use profanity, their occupation would not have required them to intervene medically if he had. Though they were in earshot, both EMTs and both officers stated that the § 87(2)(b) Hospital waiting room was very busy. The § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Squad #9

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date